IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5683 OF 2005

IN

NOTICE OF MOTION NO. 4001 OF 2004

IN

NOTICE OF MOTION NO. 4441 OF 2004

IN

L.C. SUIT NO. 7196 OF 2000

Mrs. Shaila Kishan Mahakik
@ Shaila Kishan Kasare
and anr. .....Petitioners
(Orig.Plffs)
vs.
Brihanmumbai Municipal Corpn.
of Gr. Bombay and Ors. ....Respondents/
(Orig.Defts)

A L O N G W I T H

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(Orig.Defts)

Shri Nitin Mulye for the petitioner.

Ms. Nisha Dabhade for respondent no.1/BMC.

Shri. M.H. Solkar, AGP for respondent no.2 & 5.

CORAM: S.B. MHASE, J.

DATED: 10TH APRIL, 2006.

P.C. :

1. Rule. Returnable forthwith with the consent of the parties.

2. The orders passed by the City Civil Court, Bombay in Notice of Motion No. 4441 of 2003 and 4001 of 2004 are under challenge before this court.

By the said orders the motions are rejected. By Notice of Motion No. 4441 of 2003 a prayer was made to restore the suit which was dismissed for default. However the said motion was rejected since no steps were taken by the petitioner to show service to the corporation or to the state. The Notice of Motion No. 4001 of 2004 was filed to restore the Notice of Motion No. 4441 of 2003. However the said motion is rejected on the ground that the suit itself is dismissed long back and that there is no prayer for restoration of the suit. Both these orders are under challenge.

3. The L.C. Suit No. 7196 of 2000 was dismissed for default on 4.8.2003 since neither the plaintiff nor his advocate were present. In order to restore the suit, a Notice of Motion No. 4441 of 2003 in L.C. Suit No. 7196 of 2000 was filed wherein the prayer was made that the Honourable court be pleased to direct the court office to take on file the said Notice of Motion and restore the above suit and place the same on record for hearing and delay if any may be condoned. The said motion

was rejected by an order dated 17.4.2004 by observing that the plaintiff petitioner and his advocate when called out were absent. and no steps were taken by the plaintiff to serve the corporation or the state. Since the said Notice of Motion was dismissed another Notice of Motion No. 4001 of 2004 in L.C. Suit No. 7196 of 2000 was filed to restore the Notice of Motion No. 4441 of 2003 taken out for restoration of Suit No. 7196 of 2000 which was dismissed on 4.8.2004 and on this motion it is observed that the suit is dismissd long back and no restoration is filed. If the facts as stated above are taken into consideration in sequence it is found that the suit was dismissed, therefore a Notice of motion for restoration of the suit was filed; That was dismissed since steps were not taken to serve the respondents and therefore the Notice of Motion to restore the earlier Notice of Motion was filed. Therefore it was open for the court to consider as to whether the Notice of Motion no. 4001 of 2004 is to be allowed so as to restore the Notice of Motion no. 4441 of 2003 and if the court would

have proceeded in sequence to dispose off the Notice of Motion ultimately the court would have come to a prayer of restoration of the suit. I have heard the parties. In the interest of justice it is necessary to hear the main suit. That will result into final adjudication of the disputes between the parties. Since technical approach ultimately results in multiplicity of litigation. It also shakens the confidence of each citizen in justice delivery system. Therefore the orders passed in Notice of Motions No.4001 of 2004 and 4441 of 2003 are hereby set aside. Long Cause Suit No. 7196 of 2000 is restored back. The petition then is allowed in above terms.

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